

Amendment No. 1 to HB1538

Keisling
Signature of Sponsor

AMEND Senate Bill No. 352*

House Bill No. 1538

by deleting all language after the caption and substituting instead the following:

WHEREAS, disability fraud can involve malingering, filing multiple applications, concealing work or other activities, and exaggerating or lying about disabilities, costing the State of Tennessee millions of dollars every year; and

WHEREAS, the United States Social Security Administration (SSA) - Office of Inspector General (OIG), Cooperative Disability Investigations (CDI) program's primary mission is to obtain evidence that can resolve questions of fraud before benefits are ever paid; and

WHEREAS, SSA and OIG jointly established the CDI program in fiscal year 1998, in conjunction with state Disability and Determination Services (DDS) and state or local law enforcement agencies, to effectively pool resources and expertise and prevent fraud in SSA's disability programs; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following as a new chapter:

4-45-101.

(a)

(1) There is created a Tennessee office of cooperative disability investigation, referred to in this chapter as the "division".

(2) The division:

(A) Is administratively attached to the department of finance and administration and may employ up to five (5) staff persons;

(B) Is headed by a special agent in charge, who also serves as an agent for investigative purposes;

(C) Is separate and distinct from any other bureau or agency in the state, and works primarily with the United States social security administration - cooperative disability investigation unit; and

(D) Shall report quarterly to the chair of the health and welfare committee of the senate, the chair of the health committee of the house of representatives, the chair of the government operations committee of the senate, and the chair of the government operations committee of the house of representatives on the number of disability cases investigated, the results of those investigations, and other matters the general assembly may deem relevant to the function of the division.

(b) The division is a temporary agency of state law enforcement officers, known as special agents, who shall work solely with the United States social security administration - cooperative disability investigation unit, for the purpose of saving taxpayer funds by investigating disability claims under the United States social security administration's Title II and Title XVI programs that state disability examiners believe are suspicious.

(c) The division shall enter into a memorandum of understanding with the United States social security administration specifying that all fiscal responsibilities needed to fund and operate the division, including, but not limited to, salaries, overtime, insurance benefits, retirement benefits, paid leave, operating costs, and personal duty equipment must be provided by the United States social security administration. State funds must not be used to fund or operate the division. If the United States social security administration fails to provide the funding needed to fund and operate the division at any time prior to July 1, 2024, then the division ceases to exist.

(d) State special agents who work with the United States social security administration - cooperative disability investigation unit team shall investigate allegations of disability fraud. Upon completion of an investigation, a report detailing the investigation must be sent to the disability determination services, where disability determination services staff serves as the ultimate decision-making entity in determining whether a person is eligible to receive a monthly disability benefit payment.

4-45-102.

The division has the authority to:

- (1) Investigate the allegation of disability fraud by conducting interviews of the applicant and third parties and conducting surveillance on those parties;
- (2) Investigate civil and criminal fraud and abuse, and investigate other violations of state criminal law;
- (3) Cooperate with other law enforcement agencies, and where a preliminary investigation of fraud and abuse by a provider establishes a sufficient basis to warrant a full investigation, refer matters to the appropriate enforcement authority for criminal prosecution;
- (4) Refer matters to the appropriate enforcement authorities for civil proceedings of funds that have been inappropriately paid by the disability program, including referral to the attorney general for civil recovery; and
- (5) Cooperate with other state agencies to investigate disability fraud and abuse.

4-45-103.

(a)

- (1) When conducting an investigation or as part of a legal proceeding, the division has the authority to issue subpoenas to compel the attendance of witnesses to examine persons under oath, and to compel persons, firms, or

corporations to produce information, including books, accounts, papers, records, and other relevant documents.

(2) If a person, firm, or corporation fails to attend or fails to produce information as prescribed in subdivision (a)(1), then, after giving reasonable notice to the person, firm, or corporation, the division may seek judicial enforcement of the subpoena by filing, through the attorney general, a petition with the circuit or chancery court of Davidson County or of the judicial district in which the person, firm, or corporation resides. The petition must incorporate, or be accompanied by, a certification regarding the notice given and the failure of the person, firm, or corporation to attend or produce the information.

(3) Upon the filing of a petition under subdivision (a)(2) in proper form, the court shall order the person, firm, or corporation named in the petition to appear and show cause why they should not comply with the subpoena or be held in contempt for failure to comply. The court may employ all judicial power as provided by law to compel compliance with the subpoena, including those powers granted in §§ 29-9-103 - 29-9-106. The court may impose costs and sanctions against such person, firm, or corporation, in the same manner and on the same basis as may be imposed for failure to comply with judicially issued subpoenas under the Tennessee Rules of Civil Procedure.

(4) The court may order the person, firm, or corporation to comply, and has the authority to punish the persons and entities for each day they fail to comply with an order as a separate contempt of court.

(5) The subpoena enforcement remedies set forth in this subsection (a) are cumulative, and not exclusive, of other remedies provided by law for the enforcement of such subpoenas.

(b) The division has the authority to compel the production of current and former employment records as part of an investigation. Employment records include

employment details, wages, and insurance information of disability applicants and enrollees. Employment records must be open to inspection and are subject to being copied by a special agent at any reasonable time and as often as may be necessary. The division also has the authority to compare information reported to the United States social security administration and the bureau of TennCare by applicants or enrollees with data maintained by the credit bureaus.

(c) The complete patient record of any applicant for disability benefits must be made available to the division upon request. The record may include any services, goods, and pharmaceuticals dispensed regardless of the payment source. Records accessed during an investigation must be protected in accordance with state and federal privacy laws.

4-45-104.

(a) The staff of the division must include law enforcement officers, as defined in § 39-11-106, who shall be known as special agents and must be qualified in accordance with § 38-8-106, and must have successfully completed a training course approved by the Tennessee peace officer standards and training commission. Special agents must undergo a federal background investigation conducted by the United States social security administration - office of inspector general, who will post job openings, conduct interviews, and select agents for the division.

(b) A duly authorized special agent who has been designated by the division to enforce this chapter is authorized and empowered to go armed while on active duty engaged in enforcing this chapter. A special agent is also considered a commissioned qualified criminal investigator for the purposes of the federal Law Enforcement Officers Safety Act of 2004 (Pub. L. No. 108-277), and is directed, pursuant to § 39-17-1315(a)(1), to carry firearms at all times, regardless of regular duty hours or assignments. Special agents are also empowered to execute search warrants and do all

acts incident thereto in the same manner as search warrants may be executed by sheriffs and other peace officers.

(c) Special agents of the division have the authority to make arrests for state felony or misdemeanor violations and the authority to make traffic stops in an emergency situation where the safety of the public is in jeopardy.

4-45-105.

(a) Records obtained pursuant to this chapter must be treated as confidential investigative records of the division and must not be open to public inspection.

(b) Notwithstanding other law to the contrary, a person or entity is not subject to any civil or criminal liability for providing the division with access to data as required by this chapter.

(c) This chapter does not require a person or entity to create new records or data that did not exist at the time of the request. However, a person or entity shall not destroy existing data after having been put on notice that access to the data is required pursuant to this section.

4-45-106.

Representatives from the cooperative disability investigations program shall appear before the government operations committee of the senate and the government operations committee of the house of representatives by December 31, 2023, to report on all aspects of the division's performance.

4-45-107.

No later than January 31, 2023, the division shall submit a final report on its overall operations to the legislative committees listed in § 4-45-101(a)(2)(D). The division shall also provide the legislative committees with any other information related to the function of the division upon request.

4-45-108. This chapter is repealed July 1, 2024.

SECTION 2. This act takes effect July 1, 2021, the public welfare requiring it.